

think we should be thinking long and hard before we go with judges and give a license for them to be more expansive in their role in the legislating arena. That is wrong. It is not in the Constitution. It is not the division of powers. We should have judges who strictly interpret. That is what these nominees are about and much of the base of this fight is about.

I urge my colleagues on the other side of the aisle to think about what they will force in response by this tactic, and there will be a response to this tactic. I do not think it is wise for this body to move toward that route.

I thank the Chair for this time. I yield the floor and yield back the remainder of time.

The PRESIDING OFFICER. The majority time has expired.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

Pending:

Inhofe amendment No. 605, to provide a complete Substitute.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, the highway bill which is presently before us comes to us pursuant to a budget agreement that was passed last Friday morning. In fact, I guess it was passed about 1 a.m. Friday morning. That budget agreement had in it language that said there would be \$284 billion spent on highways under this highway agreement. It also had language in it referencing something which is called a reserve fund which essentially says if legitimate offsets could be found, and if they were determined to be legitimate by the chairman of the Budget Committee, then that number could be increased by the amount of those legitimate offsets.

Initially, when the bill was brought forward it was brought forward at \$284 billion. It was brought out of committee at \$284 billion. On Monday during the wrapup session, by unanimous consent, that bill, which had already been subject to a substitute, was hit with another substitute that had 1,300 pages in it. Within those 1,300 pages—and they are not absolutely sure of this number yet—somewhere in the vicinity of \$11.5 billion of new spending out of the highway trust fund. That in and of

itself was inconsistent with the budget resolution that had been passed last Friday in that it was \$11.5 billion over that resolution and was therefore out of kilter relative to the allocation given to the committee, the Public Works Committee.

In addition, within those 1,300 pages which were submitted by substitute, by unanimous consent, on Monday night, one legislative day after the budget had been passed, were representations that the offsets had been placed in to pay for the \$11.5 billion. There was no referral of those offsets to the Budget Committee as was required under the law that had just been passed on the prior legislative day in the reserve fund of that law. In fact, the offsets as represented first were offsets which would apply to the general fund, not to the highway fund, and therefore created a violation of the Budget Act. But second were offsets which do not pass what we might refer to as the “straight face” test. In other words, they were not legitimate offsets. In fact, one of the offsets which was referred to has been used 14 times in the last 2½ years—14 times. Yet it was referred to with a straight face, although I am sure there was a smile behind it, as a legitimate offset.

It would be humorous were it not for the fact that it adds a \$11.5 billion burden to the taxpayers, which on the prior Friday we had said we were not going to do to the taxpayers. So the bill as presently pending under the substitute, as put forward on Monday night, the 1,300 pages which are so extensive that CBO, which is the scorekeeper around here, has even had trouble figuring out what is in it, that bill is presently in violation, or that substitute is in violation of the Budget Act. It is quite simply unequivocally, unquestionably a budget buster.

One must ask the very obvious question that when the Senate passes a budget on Friday of the legislative week, if on the Monday of the next week, which amounts to the next legislative day, if that next Monday you are going to by unanimous consent, late in the afternoon, during wrapup, put forward a substitute which includes in it a budget-busting expansion of spending with a euphemistic and illusory statement of offsets—self-serving, also, by the way—if we are at all serious as a Congress about disciplining ourselves when it comes to protecting the American taxpayer relative to the rate of growth of the Federal Government and Government expenditures. It would appear that if this substitute is allowed to survive in its present form, with this additional money being spent, which exceeds significantly what was agreed to in a budget that was passed the day before, the answer to that question would have to be, regrettably, no, we are not.

In addition to that problem, there is the issue of the President. Now, rolling the Budget Committee around here is sort of good entertainment, and it hap-

pens, unfortunately, too regularly. But rolling the President of the United States, and especially when the party of the President of the United States decides to roll the President of the United States, is something a little more significant. The President has said 284 is the number, the President has said even if there are offsets, 284 is the number and we are not going above that number. Yet a bill is reported to the floor that met that number with the clear, obvious understanding now that it was going to be gamed, that 284 number was going to be ignored. And now we have a bill that is probably 295, 296, maybe 300. We are just not sure. We are talking billions, folks, just to put it in context. That is not \$296. That is \$296 billion, which is a lot of money.

So the President has made it very clear—he has made it clear in his press conference, his administration has made it clear, the director of OMB has made it clear, and in an agreement with the House leadership there was a clear understanding the highway bill would spend \$284 billion, not \$296 billion, whether it was offset or not. Yet that position of the President is being—well, it is being more than ignored. It is being run over by a bulldozer or maybe a cement mixer or maybe a paver. But in any event it is being run over. And that seems a little bit inappropriate, slightly inappropriate to me. Since the President has decided to try to exercise some fiscal discipline, it would seem that we as a party that allegedly is a party of fiscal discipline would follow his lead rather than try to run him over.

So you have two problems. You have the problem of a Republican Senate running over a Republican President because we want to spend more money—or at least some Members of the Senate do—and then you have the Republican Senate running over the Republican budget because some members want to spend more money. Then you have this gamesmanship, I guess would be the best term for it, which occurred on Monday night when you take 1,300 pages and throw it in under unanimous consent and put in it language which raises spending by \$11.5 billion and has these proposed offsets which do not pass the straight face test.

So you wonder about that and you have to ask yourself where are we really going if we can't even discipline ourselves on something like this. You have to remember this bill did not start out at 284. It started out 2 years ago at, I think it was 219, maybe it was 220, maybe it was 230. It was in that range. Then last year, through another sleight of hand dealing with the funding mechanism, we shifted—we didn't but some did—\$15 billion or \$18 billion—I do not recall exactly—out of the general account over to the highway account claiming that there was no revenue impact, that this was an offset, of course, putting an \$18 billion hole in the general fund in exchange for covering up with the extra spending

in the highway fund. Then that, with a couple other manipulations, got us up to this 284 number which means that we are already in the hole on this bill relative to the budget approximately \$18 billion before this next exercise of adding \$11.5 billion on top of it.

It is my obligation, obviously—I end up drawing the short straw around here by some degree by being Budget chairman, but it is an obligation I take on because somebody has to do it and it should be done—to be sort of the person who comes to the floor and says: What the heck are we doing? We pass a budget on Friday which says we are going to control spending, says we are going to limit highway spending to \$284 billion, and then on Monday in wrapup, with 1,300 pages of obfuscation, there is thrown in \$11.5 billion of new spending, and thrown in are a lot of illusory and baseless offsets. What the heck are we doing?

Well, in the context of what the heck are we doing, I have at least the right to make us vote on this, at least the right to say to my fellow colleagues, if you want to do it, do it in the open a little bit. The way we should have done it, of course, was the way it was originally structured. There should have been a straight up-or-down issue of whether, A, this additional \$11.5 billion was a good idea to spend over the budget; or, B, properly offset. That is not now possible to do. I admit the folks who thought this out were creative and they structured it so that is no longer possible to do. It was possible to do on Monday until there was wrapup but not possible to do now.

That is the way it got structured, so I am left with very few options.

Mr. President, I reserve the right to retain the floor for the purposes of discussing with the leader of the bill the timing on this next vote. Is it the leader's position that he would want to vote at 11:15?

Mr. INHOFE. Mr. President, in response to the distinguished chairman, yes, anytime after 11:15 and before 12 o'clock.

Mr. GREGG. Well, I will make the motion now and then ask we be in a quorum call until 11:15.

Mr. INHOFE. I would rather not do it because I will make a motion to waive after the Senator makes the point of order. That is debatable and I would like to make it.

Mr. GREGG. We can just set the vote at 11:15 and you can debate it.

Mr. INHOFE. Sure. That is fine.

Mr. GREGG. Mr. President, I ask unanimous consent that upon my making the point of order, should the chairman make a motion to waive that point of order, that vote be at 11:15 with the yeas and nays being considered as being ordered.

Mr. LAUTENBERG. Reserving the right to object, will the Senator repeat the unanimous consent request?

Mr. GREGG. I am asking that we move to this vote at 11:15, but if the Senator needs 5 minutes, we can make it 11:20.

Mr. LAUTENBERG. Make it 11:30. Then I would have no problem with it, and we will try to use time as quickly as we can.

Mr. GREGG. I would ask that the time be evenly divided.

Mr. LAUTENBERG. Yes. No objection.

Mr. INHOFE. Reserving the right to object.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. INHOFE. For clarification purposes, are we now talking about a vote at 11:30; is that correct?

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I believe I reserved the floor.

The PRESIDING OFFICER. The Senator from New Hampshire does have the floor. The Senator from New Hampshire is recognized.

Is there an objection to the vote occurring at 11:30 with the time equally divided? Is there any objection to that restated request?

Without objection, it is so ordered.

The Senator from New Hampshire.

Mr. GREGG. Mr. President, I make a point of order that the pending substitute increases spending in excess of the allocation to the Committees on Environment and Public Works, Banking and Commerce. Therefore, I raise a point of order against the amendment pursuant to section 302(f) of the Budget Act.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. I move to waive any relevant provisions of the Budget Act for the substitute and the bill.

Mr. GREGG. The yeas and nays have been ordered, as I understand it.

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. GREGG. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, there can be honest differences of opinion. The way this has worked historically, and I have had the experience on this type of legislation for 19 years now, is that we come up with a bill. The bill we came up with is based on a formula. It is not a pork bill. It is a spending bill because it is a spending bill on infrastructure for America.

My job, and the job of the ranking leader, Senator JEFFORDS, is to come up with a bill that meets the infrastructure needs of America. Then we look to the Finance Committee to help us to find the funds to finance it. I am not about to pass judgment, as others appear to be readily willing to do, to cast disparaging remarks on the nature of the offsets or the nature of the product of the Finance Committee. I know we came up with a good bill. It is one that is not nearly as high, in terms of

the amount of money that would be spent, as the needs. In fact, it has been looked at and evaluated that if we are to pass a bill, even at the \$295 billion over the 6-year period, of which 5 years are remaining, that it would not even maintain what we have today.

I also want to correct something else because the very distinguished chairman of the Budget Committee is certainly knowledgeable in all of these areas. He talks about being conservative and talks about doing these things in a proper and appropriate way. Well, I would challenge anyone to match my conservative performance and credentials, and yet I have always said that when one comes to this body there are two areas where conservatives are big spenders. One is in national defense and one is in infrastructure. That is what we are supposed to be doing. We are supposed to be building the infrastructure and improving the infrastructure.

This bill is not just any type of bill that is coming along. This is a bill that is a matter of life and death. We put together a formula to determine how the distribution between the States should take place. In that formula, one of the elements is the mortality rate on the highways on a per capita basis. Now, if no one is concerned about the number of lives that are lost, quite frankly my State of Oklahoma has more lives lost on the highway than the average State. Consequently, that is one of many determining factors in a formula. The formulas have factors for the donee States and the donor States, the number of miles and, I might even add to my friend from New Hampshire, even covered bridges.

This bill probably could be considered by most people as the most important bill we will have this entire year. It is probably the second largest bill we will have this entire year. It is one that lets us rebuild the infrastructure of America. We all have heard the statistics. There is no sense going over and plowing those fields again, but it is one also that is a huge jobs bill.

I am not one to say that WPA—actually the WPA looks pretty good now after a few years, but I do not look at Government as the ultimate employer. But when they talk about for each billion of new construction it provides 47,000 jobs, it is a huge jobs bill. It is very significant.

Many people are supporting this bill. There are Democrats, Republicans, liberals, conservatives. As a conservative Republican, I wholeheartedly support it. I support it at the higher level because I think that is what we are supposed to be doing.

I am sure there will be those who want to talk a little bit about the product of the Finance Committee. I know the ranking member of my committee, Senator JEFFORDS, wants to make a statement or two. We have between now and the next 25 minutes to discuss this. I just want to assure my friend, the chairman of the Budget Committee, I am very sincere, and I think

we are doing the right thing. While I do not always agree wholeheartedly with the President, I do 99 percent of the time. In this case, I disagreed last year. Last year, when we came up with \$318 billion, we should have passed that. I believe the Finance Committee was sincere when they said we had this covered, and it was something that I supported at that time. The President did not support it.

There are a lot of things we pass that I would like to debate and not pay for. This is not one of them. I feel very strongly that we should go ahead. Quite frankly, I do not think the number is high enough, but if this is all we can cover, then I am happy with that. The most important thing is we have to have a highway bill. We are on our sixth extension right now. The States are wondering what we are doing. They have no way of planning in advance. They cannot plan for the next 5 years. All they can do is say: We have another 6-month extension. What will we do for the next 6 months? Then we all miss the construction season. In States such as that of my friend from Vermont, a northern State, and the State of New Hampshire, we have already missed the majority of the construction season. So it is very important that we not continue with extensions and that we get this bill passed. To do this, we already have a cloture motion in effect. We need to get by this motion, and I think we will be doing that.

I yield to the ranking minority member.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I rise today in support of manager's package for the highway bill.

This package, which combines all four titles of the Safe, Accountable, Flexible, Efficient Transportation Equity Act, increases funding for our highways and transit systems by \$11.2 billion.

I commend Senators GRASSLEY and BAUCUS for putting together a package that not only increase the resources for our States but does not add to the Federal deficit.

One cannot drive this highway bill on empty. Funding is its fuel, and we need to make sure this bill has a full tank when it leaves the Senate and heads to conference.

The White House argues that the financing of the manager's package is based on gimmicks.

To that I say nonsense.

If Senator GRASSLEY and Senator BAUCUS tell me it is paid for, then I believe them.

Frankly, compared to the funding levels in last year's highway bill, today's package is modest.

The President should be claiming victory and applauding our actions rather than threatening a veto.

This additional funding will mean we can make more roads safer, make sure more Americans face less traffic, and create more jobs.

This additional funding benefits every State, every city, every country and every town. This additional funding makes all the world of difference.

I would yield the floor at this time and offer the Senator from Arkansas such time as he desires to discuss the transportation bill.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, we do want to hear from the Senator from Arkansas, but in fairness, we should go back and forth. The chairman of the subcommittee, Senator BOND, wants to be heard first. Does the Senator from Vermont have an objection to that?

Mr. JEFFORDS. That is fine.

The PRESIDING OFFICER. (Mr. GRAHAM). The Senator from Missouri.

Mr. BOND. How much time do we have remaining?

The PRESIDING OFFICER. Six minutes for the proponents of the motion.

Mr. BOND. I ask that I be given 4 minutes of that, allowing 2 minutes for my colleague on the other side of the aisle.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, we are once again asking for the support of our colleagues to raise the contract authority or budget authority in the highway bill. We said we were going to do this when we brought it to the floor. Eighty of our Members voted in the Budget Act to allow the Finance Committee to come in with additional resources, which they have done. There has been discussion about the legitimacy of the offsets and the Finance Committee actions. The Joint Tax Committee has scored it. That is the authoritative view. It does not add to the budget. The comments about this being a budget buster are absolutely wrong. These funds are paying for the money we add.

I will explain a little bit of complicated budgetary process. There are two things called the obligation limit, which is the amount that can be spent, the guaranteed amount. Traditionally, we have put a higher number into the bill for what we call budget authority, or what is called contract authority. That is because the highway departments cannot spend all of the money that they contract, and to enable them to spend the \$283.9 billion guaranteed spending proposed by the President we have to have a higher contract or budget authority number.

This measure, which was added by the Finance Committee and which is now subject to the point of order, was designed to raise, with a fully offset amount, the spending so that we could provide additional funds for badly needed State roads.

Let me be clear. This amount that was added will enable us to bring all donor States up to 92 cents on the dollar by the end of the period. It will also guarantee those States which are at the bottom of the list in terms of increases to get at least a 15-percent in-

crease. It is imperative that those who joined with us in the 80-vote majority to add the provision allowing the Finance Committee now reaffirm that they believe this money is necessary.

The additional money, contract or budget authority, will not be spent, the obligation limit will increase slightly, but we cannot spend the money the President said we should spend, the \$283.9 billion, unless we increase the contract authority. Obviously, that's lots of confusion but that is where we are.

I urge my colleagues who understand, as the chairman and ranking member of the committee and my colleague Senator BAUCUS on the committee understand, we have to have this money for safety, for economic development, for continued growth and the health of our economy.

I yield the floor and reserve the remainder of our time for use by my colleague.

The PRESIDING OFFICER. Who yields time? The Senator from Arkansas.

Mr. PRYOR. Mr. President, I rise to offer my support for the motion to waive the budget point of order and also to support the efforts of the Senator from Oklahoma and urge my colleagues to also support those efforts. This legislation is 2 years overdue. I am very pleased we are finally making some headway on getting this done. Forcing our States to operate under the uncertainty caused by short-term extensions is no way to govern. We are now in the sixth extension, and it is my hope that we are able to complete our work in the Senate and complete the conference before the current extension expires at the end of the month.

I also thank Senator INHOFE, Senator BOND, Senator JEFFORDS, and Senator BAUCUS for their very hard work on this bill and all the time they have spent and their efforts in working in such a bipartisan way. I also thank Senator SHELBY and Senator SARBANES on the hours they have put in on the transit portion, and I thank Senators LOTT and INOUE, as chairman and co-chair of the Commerce Committee Subcommittee on Surface Transportation and Merchant Marine for their work on the safety portions of this bill.

Economic development is a very important part of any infrastructure development—we talked about that a little bit this morning already—but not at the expense of the safety of families. This bill enhances the safety of our roadways.

As a member of the Commerce Committee, I was very happy to have the opportunity to play a role in developing the safety titles. It is good legislation that will increase the safety of our highways for all Americans, and it is bipartisan legislation, developed with the input of safety groups, industry, the administration, as well as State and local officials.

Every great nation in the history of the world has flourished because of improvements to its infrastructure. If you look at the great periods of development and invention in the world, almost all of them have coincided with advances in transportation options, whether it is safely moving people, expanding trade, or increasing contact between cultures. My constituents remind me all the time about the importance of roads and relieving congestion and creating economic growth—virtually every time I go to Arkansas. Last week when I was there, people were asking me, when in the world are you going to get the highway bill done?

Our constituents are very smart. As I travel the State I hear the same four things over and over, and I believe they are right. They tell me the four things we must accomplish in this highway bill are, No. 1, we must produce a highway bill that addresses critical infrastructure needs that are not currently being met; No. 2, we must produce a highway bill to spur economic development and the creation of jobs.

How is my time doing, Mr. President?

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PRYOR. I ask unanimous consent for 2 more minutes.

Mr. GREGG. Mr. President, I yield the Senator 2 minutes off of my time, even though he doesn't appear to be agreeing with me.

Mr. PRYOR. I will make it quick. I thank the Senator for yielding the time.

No. 3, we must produce a highway bill to increase the safety of our transportation system for American families and, No. 4, we must produce a highway bill that anticipates future needs.

I could go on and on about how important it is for job creation, which we talked about a few moments ago; about how much more congested our highways are today as opposed to 10 years ago, and how congested they will be in 20 years from now.

I offer my support and encourage my colleagues to support the efforts of Senator INHOFE and others as we go through this very important legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I want to take this opportunity to respond to the points raised to justify the budget point of order. The reason I want to do that now is because there are some things that are not clear about this legislation. I tried to make them clear in my remarks yesterday, but it is obvious that if they had been clear, there would not have been a budget point of order.

One of the points made by the chairman of the Budget Committee and other Members of the Senate is that the Senate highway bill is larger than the President's request. It was alleged that Senate authorizers "snuck in" a change in their substitute, without a

separate vote, to increase the bill's level of funding above \$284 billion. Senate budget staff is correct that the amendment on the Floor that is pending is larger in size than the bill requested by the President. Senate leadership, all authorizing committees, and the Finance Committee were well aware of this fact and made a determination to offer a substitute amendment in excess of the President's request. This makes perfect sense and, of course, is in keeping with separation of powers and the fact that the President, under our Constitution, proposes and the Congress, under the Constitution, disposes.

A majority of the Senate wishes to provide more infrastructure resources than the executive branch. The substitute bill, with increased funding, is completely offset or revenue-neutral. As a matter of fact, the bill contributes positively and substantially towards deficit reduction. As indicated in my statement yesterday, the administration and the budgeteers should focus on deficit reduction rather than on the top-line spending number. The Senate continues to offset legislation and, by so doing, exercises fiscal restraint, a fact being continuously ignored by some in this body.

Another point made is that provisions passed in the JOBS bill last October—sometimes referred to as FSC/ETI bill—signed by the President in October, that somehow the provisions we had in that bill relating to fuel fraud did not increase general fund receipts or even things dealing with other tax provisions did not increase general fund receipts. I speak of acronyms that we used last fall that may not be familiar to people now that we are by that legislation. But we constantly talked about the ethanol provisions with the acronym, VEETC, volumetric ethanol excise tax credit, and fuel fraud provisions that were enacted in the JOBS bill which other Members of this body have alleged, and I quote here, "have made the highway trust fund healthier by \$2 to \$3 billion annually only by definition, since merely moving around deck chairs has not changed the Federal Government's bottom line."

That is a serious accusation considering how careful we were over a period of months last year not only to work on the VEETC provisions to bring in money to the Federal Government that was fraudulently not being paid but also to make sure that we did it in a fiscally sound way.

This is my answer to that accusation. Last year the JOBS bill enacted ethanol and fuel fraud provisions that increased projected receipts to the highway trust fund by \$17 billion during the period of the highway bill reauthorization, 2005 to 2009. These provisions were also included in last year's transportation bill but had to be enacted instead in the JOBS bill after it became clear that we would not get a conference agreement on the highway bill.

That is an unfair accusation that somehow all this work that we went

through is just moving around deck chairs but has not changed the Federal Government's bottom line. Seventeen billion dollars coming in during that period of time, \$17 billion, some of which was being fraudulently avoided.

Congress had good reasons to enact the ethanol changes in the JOBS bill. These changes helped to pay for a large bipartisan tax bill to provide tax relief to domestic American manufacturing. And these ethanol changes accompanied other energy incentives in that bill that had overwhelming support of both Chambers and both parties. Because of those ethanol changes, fuel excise tax receipts are now going into the highway trust fund. That means the Federal highway program now has more dollars available to it. It is just common sense. That is how trust fund accounting works.

It seems that some would now allow us to ignore those accounting rules. Some would like us to pretend that those new fuel tax dollars are not in the trust fund. You can't change what are just plain facts of life. These funds are in the highway trust fund.

This Congress should not pretend that a law enacted by a previous Congress did not happen. We are not using fuzzy arithmetic or fuzzy accounting. We are not just moving deck chairs around and not affecting the Government's bottom line. We are, in a very real way, affecting the Government's bottom line. And we are going to have, not only people who were avoiding paying taxes paying those taxes, but we are going to be able to have better transportation infrastructure, better highways by what we are doing. We should not ignore standard fund accounting rules because a minority of this Senate disagrees that taxes paid on a gallon of ethanol should not go into the highway trust fund.

The administration did not object to these provisions as part of the JOBS bill last October. The President signed that bill and now the administration's own transportation proposals rely on these new trust fund receipts that were developed in a bipartisan way by the Senate Finance Committee. The changes that we made in the JOBS Act made good sense, common sense, but that comes out also as good policy. They raised money for the highway trust fund.

We have every right—indeed, we have every obligation to the people who pay money into the road fund—to use those funds to improve America's highways.

If you don't use trust fund money for highways or for other transportation reasons, you should not be taxing it in the first place. But once it is taxed, those people who are fraudulently not paying that tax are guilty and should pay that tax. Our provisions do that.

Another claim by the Budget Committee is that the Finance Committee has not provided real offsets for increased burdens to the general fund. My colleague from New Hampshire, chairman of the Budget Committee,

suggests that our bill offsets, including economic substance, are illusory. He is concerned that these offsets, which were also passed during the last Congress, will be dropped in conference.

Now, the Joint Committee on Taxation, as we all know—maybe some of us forget—is the official scorekeeper on tax matters in the Congress, not the Congressional Budget Office. The Finance Committee has provided tax law changes that have been scored by the Joint Committee on Taxation as fully offsetting any increased burden to the general fund. The Joint Committee on Taxation is the official scorekeeper for revenue provisions under the Congressional Budget Act. It is not the Senate Budget Committee that is the scorekeeper; it is the Joint Committee on Taxation. Section 201(g) of the Budget Act restricts the Congressional Budget Office in a manner in which it carries out its responsibilities related to revenue legislation. Section 201(g) provides, in pertinent part:

For the purposes of revenue legislation, which is income, estate and gift, excise, and payroll taxes, considered or enacted in any session of Congress, the Congressional Budget Office shall use exclusively during that session of Congress revenue estimates provided to it by the Joint Committee on Taxation. During that session of Congress, such revenue estimates shall be transmitted by the Congressional Budget Office to any committee of the House of Representatives or the Senate requesting such estimates, and shall be used by such committees in determining such estimates.

This, then, should put to rest this debate about whether these offsets that are in my amendment and in Senator BAUCUS's amendment—that is a bipartisan amendment—are real. They have been scored by the Joint Committee on Taxation, the official scorekeeper under the Congressional Budget Act for revenue purposes.

I kind of think that maybe the Budget Committee is living in an ivory tower. It is particularly troubling that this nonsense attack—that the offsets are not real—comes from a committee that doesn't have to do any of the heavy lifting to find real offsets and real savings. But instead just find reasons to complain about some other committee's work. It must be nice to be able to just pick numbers out of thin air and try to claim the numbers are real or, in this instance, somehow not real, even though the Joint Committee on Taxation scores it as revenue-neutral, or better than revenue-neutral, as reducing the deficit. But it is the Finance Committee, not the Budget Committee, that actually has to do the hard work of finding, negotiating, and drafting the policies that can pass the Senate and create these real offsets.

Yesterday, I said 40 percent of the new funding is hard trust fund money. Of course, the Finance Committee gets no credit for that effort, no credit at all. It is a ridiculous charge. It is so easy to throw rocks around here. How about dealing with constructing policy

instead of throwing rocks? I would like to see some of that.

The complaints we are hearing are from a committee that has no responsibility to find real numbers, real offsets, or real savings. It reminds me of an agricultural economist telling a farmer how to farm. I suggest that those who are sitting on the fence giving this farmer—and I am an Iowa farmer—stewardship advice about how to farm should get off the fence and get some dirt under their fingernails, and I will be happy to show them how to start the tractor. And I say this as a person who has been very loyal in my membership on the Budget Committee, as well as being chairman of the Finance Committee, because out of 48 amendments that were offered to destroy the budget that came out of the Budget Committee, I supported the chairman on 47 of the 48 amendments.

Now, the suggestion was also made that we have used these revenue raisers in the previous Congress. None of the offsets included in the highway substitute have passed the Senate this year as part of any other legislation. Even if that were the case, those additional anticipated revenues are available until they are passed by both Houses and enacted into law.

There seems to be an additional concern that the offsets used in this bill would not survive a conference with the House. As a person who worked for 8 years and 3 days—from when I first introduced the bankruptcy reform bill to when the President signed the bill a month ago—if I would have ever stopped because a bill passed the Senate but somehow didn't get to the President, we would never have a bankruptcy reform bill. But we passed that bill seven or eight different times—the conference report, plus original legislation through the Senate. How you get things done in the Senate is by sticking with it—just don't give up.

And we are doing that here. We continue to close corporate tax loopholes the same way. People on the Budget Committee are finding fault that we might pass the Senate and not get out of conference. That somehow means we are using a smokescreen. Let me suggest that on the JOBS bill last year, which I have already referred to several times in my remarks today, we passed through the Senate \$39 billion of corporate tax loophole closers, and we ended up out of conference with \$24 billion of that \$39 billion. I don't think that is such a bad track record. If it had not been for the Senate and the bipartisan approach of the Finance Committee, we would not even have those \$24 billion of loophole closers—money coming into the Federal Treasury. So you cannot just stop. Because these offsets, whether they be fraudulent use of tax dollars, nonpayment in a fraudulent way of gas tax money or other loophole closers—in all of these cases we have people finding ways to avoid paying their share of taxes that ought to be paid.

One has to keep at it. There is a constant game around here of lawyers, accountants, and investment bankers that like to game our Tax Code. It is pretty hard to keep ahead of them, but I am determined, and Senator BAUCUS is determined, to keep ahead of them. So I am not going to have anybody tell me we are not legitimate when we pass things through the Senate that maybe cannot survive conference because eventually they do survive conference, and eventually they are signed by the President.

The Senate cannot be subjected to the expectation of passage in the House as a standard for this body. The Senate has to focus on what is possible in the Senate, and differences will be resolved and reconciled with the other legislative body during the conference process.

As an additional point, I note it was Ways and Means Chairman BILL THOMAS, not the Senate Finance Committee, who first proposed codification of the economic substance doctrine, which is the largest revenue provision added in the substitute bill. I would also like to recite a little of the history of this matter so we will not presume that something maybe will not get through conference because maybe it did not get through conference last October, particularly when the chairman of the House Ways and Means Committee first brought up this issue.

The Senate Finance Committee began its work on tax shelter legislation in 1999. During the years 2000 and 2001, the Finance Committee released three discussion drafts to stimulate public comment on the closing of corporate tax shelters. None of these drafts contains codification of the economic substance doctrine that we are using in this amendment before the Senate right now as an offset. In May 2002, the Finance Committee reported out the Tax Shelter Transparency Act of 2002, which formed the basis for the tax shelter disclosure rules enacted in last fall's tax bill. The Tax Shelter Transparency Act did not contain codification of the economic substance doctrine.

In July of 2002, a mere 2 months after the Finance Committee reported out its bill, Chairman THOMAS laid down H.R. 5095, the American Competitiveness and Corporate Accountability Act of 2002. This bill would have repealed the FSC/ETI regime and used the proceeds for corporate international tax reform. It was also the first time the Ways and Means Committee dipped its toe into the waters of tax shelter closing legislation.

H.R. 5095 parroted the disclosure provisions of the bipartisan Senate Finance Committee-reported bill, but it went one step further—it called for codification of the economic substance doctrine. So where did folks get the idea around here that somehow economic substance doctrine codification is blue smoke, intended to mislead the Senate into believing that something is

revenue-neutral when it is not because this bill is revenue-neutral as scored by the Joint Committee on Taxation.

As an aside, I remind my colleagues that this additional money comes out of the hide of tax shelter promoters and tax shelter participants, not out of the pockets of the honest middle-class working men and women of America. This is not phony money, as maybe we were led to believe. This is good tax policy.

In emphasizing that the Senate highway bill is bigger than that provided in the budget resolution, the following quote was used: "[i]t appears the Finance Committee floor amendments include provisions quite similar to those general fund transfers that were included in last year's Senate-passed bill. Such general fund transfers do nothing to offset the deficit effect of the increased spending in that amendment." I want to say why that is hogwash. The Members of this body have indicated, and will vote their intent on this issue in just a few moments, to spend more than was included in the Senate budget resolution. No procedural games, gimmicks, or end runs will be needed to prove this point. As the distinguished chairman of the Senate Budget Committee indicated repeatedly during the budget process, if there are 60 votes for something, then so be it, and clearly more than 60 members of the Senate are in agreement about this budget point of order.

But we do take issue with the fact that we were accused of sending an amendment to this Floor for consideration by 100 Members of the Senate that did nothing to offset the deficit effect of increased spending. The accusation is purely false and purposely misleading. Our substitute amendment replaced trust fund and general fund receipts and contributed substantially to the deficit reduction by more than \$10 billion.

Finally, to those critics of the Senate Finance Committee title, I reissue the challenge I put to them yesterday, that obviously was not listened to. It is the same challenge from last year. If they do not like our Finance Committee title, come forward and tell us they do not want any new money for their State from this highway bill. Alternatively, if they want to keep their State's extra money, find another way to get there that will yield 60 votes. I issued the challenge last year, I issued the challenge yesterday, and I reissue that challenge this very hour.

Now, I did not get any takers last year, I did not get any takers yesterday, and I do not expect to get any takers today. So once again, it is easy to complain, but we are here to do the people's business and this amendment that came out of my committee is the people's business—it is financially responsible, doing things to close corporate tax loopholes, to be fair to middle-class working men and women, to get the job done basically of improving our highway and transportation infrastructure.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I say to the Senator from Iowa, the distinguished chairman of the Finance Committee, what a great job they have done. We imposed upon them the obligation or the duty of coming forth and coming up with a way to pay for a more robust bill. As I have said several times before, there are still other things we need to be doing, and even with the action that has been taken, it is not enough, but I understand he does now have it in a position where we are not increasing the deficit; that this is properly offset and I would almost believe those who oppose what he is doing are people who do not want the bill to start with.

We have been inviting people to come down with their amendments. I see the Senator from New Jersey is in the Chamber. I am anxious to get as many people down as possible and would encourage those Members who have amendments, keep in mind, the deadline for filing amendments is now behind us and we are operating under cloture right now. We need to have them get down and not wait until the last minute.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. What is the status of the time?

The PRESIDING OFFICER. The Senator has 13½ minutes.

Mr. GREGG. And the opposition?

The PRESIDING OFFICER. No time.

Mr. GREGG. Mr. President, to respond in part—and in whole, hopefully—to some of the points that have been made here, let me begin by saying I have an immense amount of respect for the chairman of the committee and for the Senator from Missouri, for the ranking Democrat on the committee, the Senator from Vermont, a neighbor who is retiring and who has done great service for our country and has decided to relax and go back to a beautiful State. Of course, he is going to go to New Hampshire to buy his goods because we don't have a sales tax, by the way. The chairman does exemplary work. He has been a tireless advocate, obviously, of trying to get this highway bill across the floor.

Honestly, I thought the Budget Committee had done its job when we went to the \$284 billion number, which was a lot higher than where the President had started. I thought the President had done his job when he went to the \$284 billion number as a compromise which was a lot higher than he started out. I think he was at \$250 billion when he began this process. I thought we had reached agreement. Then Friday morning at 1 a.m., when we passed the budget, I was pretty sure we reached an agreement. The agreement was \$284 billion.

Unfortunately, the amendment which showed up Monday night put a pretty big hole in that budget—\$11.5 billion.

As I have said earlier, we have to ask ourselves, why did we pass the budget on Friday to have the effect on the next legislative day—the next legislative day—to break the budget by \$11.5 billion.

The Senator from Missouri says it is not a budget buster. I have to point out to the Senator from Missouri that yes, it is. That is what we are voting on. If it were not a budget buster, the Chair would not rule in my favor that it breaks the budget. That is what the motion is. The motion is this violates the Budget Act.

It violates the Budget Act on 2 counts. I am not taking the first count because that is a procedural battle. I am taking the second count, which is the substantive battle, which is that this amendment violates the Budget Act because it exceeds the allocation to the committee by \$11.5 billion. So it is a budget buster. If it were not a budget buster, you would not have to waive the rule, you know, so let's not throw that straw dog out there.

And the offsets? I agreed with the chairman of the Finance Committee when he came to the floor last night and said, and I will quote:

I also understand and agree with the House position that we should not mix general fund offsets and trust fund resources to that end.

I agree with that. But, yet, this amendment, this substitute, does exactly that. It takes money out of the general fund, moves it over to the trust fund, and then claims that the trust fund spending is offset by very illusory alleged revenue increases in the general fund, as I pointed out in my earlier statement. One of these revenue increases, the biggest one, has been used 14 times in the last 2½ years—14 times. How many times can you use a revenue increase?

We all know it is not a real revenue offset. We all know it is going to be dropped at conference. It has been dropped at conference every time it gets used; it gets used. It gets dropped, but the spending goes on. So as a practical matter the offsets, from the standpoint of the Budget Committee, do not plug the hole that is put in the budget, first because they do not apply to the trust fund which creates spending beyond the committee's allocation, and second because they exceed the general fund—they will not occur. I guess that's the best way to say it. They are not going to happen. The offsets are not going to happen.

Excuse me, I don't want to be excessive here: \$700 million of the alleged \$11.5 billion we deem to be legitimate offsets. They will occur.

But, independent of that, independent of whether this offset issue is real or not, and it is not real, by the way, the President—he is a Republican, he was just elected—reached an agreement with the House. He said, "I am going to let you spend \$30 billion more than I really want to spend in this area," but he has said—having made that concession to our colleagues because he got pressure—we are going to

hold the line at \$284 billion. That is it. No more.

We all know that highways are important. We all know infrastructure is important. But we reached a consensus, first between the President and the House leadership. I agree, Senator INHOFE did not sign on to that idea, other than to bring a bill out at that number, but I agree, he is very forthright. He has always been committed to getting a higher number. But at least within the context of the greater party, the Republican Party, there was an agreement at \$284 billion with the President of the United States. And then we confirmed that agreement last Friday with the budget for which 52 Republicans voted.

I am not expecting any votes on this issue from the other side of the aisle. During the budget process they proposed amendments which added \$260 billion to the budget, so clearly the issue of controlling spending is not that high on their testing, on their schedule of agenda items. But it should be on ours. We have a President of our party say \$284 billion is the number, and when that has been agreed to by a large membership of our party including, I believe, the majority leader in the Senate and the Speaker of the House, and when we confirm that agreement by passing a budget that says that is the number, we should stay with that number. It is what I would call common sense and probably appropriate action. That is why it is important, I believe, that we hold this number.

I respond to one other sidebar representation here—because it needs to be responded to but not because it is the essence of the debate—the question of the amendment that passed when we were marking up the budget, which had 80 votes, relative to how the additional highway spending would occur should additional highway spending be approved and be within the budget, called a trust fund. That trust fund had, as part of its structure, that if there was to be additional spending over \$284 billion, it would have to be offset and it would have to come back to the Budget Committee so the Budget Committee could review it to determine whether the offsets were legitimate. That did not happen. The substitute occurred Monday night. We never saw it. It took us a long time to find it. It was 1,300 pages. People have been looking for a long time to find out exactly what it means. Even CBO is having a lot of trouble shaking it out. But we know we were never consulted on that number or how it was offset, which would have been the requirement under that reserve fund. Therefore, the representation that a vote on this waiver issue should be tied into your vote on that amendment issue is very hard to connect. In fact, the two pass in the night. There is no relationship between the vote that occurred in the budget debate and the vote on this waiver issue.

This waiver issue is very simple. The chairman of the committee has moved

to waive a budget point of order because the bill as it is presently structured spends more than the budget that we passed on Friday night by \$11.5 billion. It spends that much more than the budget passed.

The offsets, we believe, are illusory. I presume the Finance Committee will argue that they are not. But they have used them 14 times before, so I will leave it to the body to decide whether they are.

But independent of that issue, the offset issue, the simple fact is this amendment puts an \$11.5 billion hole in what was an agreed-to number relative to the allocation, relative to what was going to be spent, relative to what the President thought was the understanding, and relative to what we had in our budget.

I see the majority leader is here. I yield the remainder of my time to the majority leader.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I know we will be voting here in a couple of minutes, but I did want to rise in support of the Budget Act point of order against the pending substitute to the highway bill. I do commend the chairman of the Budget Committee, Senator GREGG, for raising it.

We do need to exercise fiscal discipline in the Senate. This bill is a good example. We all want to pass a strong highway bill. It will benefit our economy and will create millions of jobs across the country. As I have said on the floor many times, it will contribute to safety on our highways. It is long overdue. The previous bill, TEA-21, expired in September of 2003 and on six occasions we have had to pass extensions. The current extension expires at the end of this month and we need to get this bill to conference as soon as possible, in my mind, so we can resolve what differences exist between the House and the Senate bill and so the President can sign it as soon as possible.

It should be clear to all of my colleagues the path to getting a bill signed into law will be smooth only if Congress stays within the spending parameters that have been laid out by the budget resolution we passed last month and by the President of the United States who must ultimately sign this bill.

The budget resolution, as Chairman GREGG has noted, allowed for transportation spending over a 6-year period of \$283.9 billion. We passed that budget resolution here in the Senate a couple of weeks ago, on April 28.

In addition, the President of the United States has made it clear he will not sign a bill into law that spends more than the amount provided for in the budget resolution—\$283.9 billion over 6 years. He made it clear publicly, privately, and in the statement of administration policy on this bill, which clearly states:

Should the obligation or net authorization levels that will result from the final bill ex-

ceed these limits the President's senior advisers would recommend that he veto the bill.

Finally, I want to make clear that sustaining this budget point of order will not kill the highway bill. Another substitute would be offered that stays within the spending limits set forth in the budget resolution and by the President, just as the various titles reported out by the different committees of jurisdiction did.

I am convinced we can pass a good bill that addresses America's infrastructure needs, creates millions of new jobs, and can be signed into law by the President. We should move forward to do just that.

I yield the floor.

The PRESIDING OFFICER. All time is expired.

The yeas and nays have previously been ordered. The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Minnesota (Mr. COLEMAN).

Further, if present and voting, the Senator from Minnesota (Mr. COLEMAN) would have voted "yea."

Mr. DURBIN. I announce that the Senator from Minnesota (Mr. DAYTON), is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 76, nays 22, as follows:

[Rollcall Vote No. 118 Leg.]

YEAS—76

Akaka	Domenici	Nelson (FL)
Alexander	Dorgan	Nelson (NE)
Allen	Durbin	Obama
Baucus	Feinstein	Pryor
Bayh	Grassley	Reed
Bennett	Harkin	Reid
Biden	Hatch	Roberts
Bingaman	Inhofe	Rockefeller
Bond	Inouye	Salazar
Boxer	Jeffords	Santorum
Bunning	Johnson	Sarbanes
Burns	Kennedy	Schumer
Burr	Kerry	Shelby
Byrd	Kohl	Smith
Cantwell	Landrieu	Snowe
Carper	Lautenberg	Specter
Chafee	Leahy	Stabenow
Clinton	Levin	Stevens
Cochran	Lieberman	Talent
Collins	Lincoln	Thune
Conrad	Lott	Vitter
Corzine	Lugar	Voinovich
Crapo	Martinez	Warner
DeWine	Mikulski	Wyden
Dodd	Murkowski	
Dole	Murray	

NAYS—22

Allard	Enzi	Kyl
Brownback	Feingold	McCain
Chambliss	Frist	McConnell
Coburn	Graham	Sessions
Cornyn	Gregg	Sununu
Craig	Hagel	Thomas
DeMint	Hutchison	
Ensign	Isakson	

NOT VOTING—2

Coleman	Dayton
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The PRESIDING OFFICER. On this vote, the yeas are 76, the nays are 22. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to, and the point of order fails.

Mr. BOND. Mr. President, I move to reconsider the vote.

Mr. INHOFE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Oklahoma.

Mr. INHOFE. Madam President, the vote that just took place is significant. We all realize that the Finance Committee has done their job. The Joint Tax Committee has verified that their work is good. They have found legitimate offsets. It is easy to say there are not, but there are. While it is very much a concern to everyone in terms of the budget and deficits, I am always ranked, certainly, as in the top five most conservative Members of this body. I can tell my colleagues, I would not vote for something that is going to increase the deficit. This is not increasing the deficit.

When we stop to think about what we are supposed to be doing in Washington, we talk about a lot of silly programs, but the two most important things on which you might say I am a big spender are, No. 1, defense and, No. 2, infrastructure. There is nothing more important that we will be voting on this year than this bill. We all know the reality that we need to get this to conference, and it was necessary to pass what we just agreed to in order to get it to conference.

I understand Senators CORZINE and LAUTENBERG are ready to offer an amendment.

I yield the floor.

Mr. GREGG. Madam President, unfortunately, I rise because I feel it is necessary to respond to the statements of the chairman of the Finance Committee which were made on this floor, both personal to me as chairman of the Budget Committee and to the staff of the Budget Committee, which I thought was an unfortunate decision.

Earlier we had a vote on waiving a point of order relative to whether this substitute, which is pending, was consistent with or is consistent with the budget we passed last Friday. Now, by definition that point of order would not have to have been waived if it was not well made. And by well made, I mean that the Chair would have ruled that this amendment, this substitute, did and does violate the budget resolution. The reason it violates the budget resolution, and I made this point earlier when I spoke, and I think I was accurate—in fact, I believe my comments this morning were entirely accurate, although they were represented to be inaccurate, regrettably—let me reiterate them. This budget resolution point of order lay because we went from a number of \$284 billion—and this is the essence of the issue here—which was the agreed number, \$284 billion—that is the number we agreed would be spent on the highway bill—we went from that number, under the substitute, to a number of \$295 billion-plus. We don't know the final number

because, quite honestly, there are so many pages in the amendment even CBO can't catch up with it, but we know it is at least \$11.5 billion over the budget number, which was \$284 billion.

This number, \$284 billion, was not only a number which had been agreed to under the budget last week, it was a number that the President had said he wanted and on which the President had reached an agreement with the congressional leaders, the Speaker of the House and the majority leader. So it was not a number pulled out of thin air, nor was it a number that was not reached after a significant amount of consultation. It was, rather, a number which was reached after having considered what we could afford, what was coming into the trust fund, what was going out of the trust fund, and what could be afforded in this area of highway construction.

I think the representation was made, unfortunately, by the chairman of the Finance Committee, that the Budget Committee was acting irresponsibly, essentially—and that is my characterization; the words actually were a little stronger than that—when we raised the point of order, saying: Hey, listen, we passed a number at the number \$284 billion, the President agreed with the majority leader and Speaker of the House that \$284 was the number, and therefore we should stick to 284.

That is our job as a Budget Committee. I understand, certainly, the chairman of the Finance Committee chairs the most powerful committee in the Senate by far. The Appropriations Committee is competitive, but our jurisdiction, unfortunately, with the shift toward entitlement spending, has been lessened. It used to be the Appropriations Committee had about 60 percent of the Federal spending. Now it is about 30 percent. Finance has about 50 percent of the Federal spending because it has all the major entitlement accounts.

But we recognize—I certainly do as chairman of the Budget Committee—that the Finance Committee is one of the two most powerful committees in the Senate, of which the other one is not the Budget Committee. Certainly the Finance chairman has every right to come to the Senate floor and remind us of that, as he did. But it really isn't appropriate for him to come to the floor and suggest that we should not still do our job simply because we are not as powerful a committee as his; that our job should be basically we should stand out of the way and just be nice little folks who stand in the corner, and when the budget is getting run over by a powerful committee, just say: Hey, no, we don't get involved in that because we are not a powerful committee. The Budget Committee was not structured that way. The Budget Committee was actually structured to be sort of a conscience around here, a fiscal conscience of, What the heck are we doing?

Yes, we only got 22 votes, which shows maybe our conscience isn't all

that strong. But, in any event, we have an obligation to raise the issues. So when we raise those issues, I think for the chairman of the Finance Committee to come down here and say, in terms which were most aggressive and most intense, that the Budget Committee was acting inappropriately and its staff was acting inappropriately, I just think that is misdirected. It does understand, but it doesn't acknowledge the fact that the Budget Committee exists. He is on the Budget Committee; I guess he knows it exists—as he mentioned. He has been a good supporter of the Budget Committee. I have never denied that. I have always said he was a good supporter of the Budget Committee. I respect him. I think he is one of the best chairman around here, as I think this chairman, the chairman of the Public Works Committee, is. I am constantly impressed by what the Senator from Oklahoma is able to do here. He is good, and I admire that, as is the chairman of the Finance Committee, and the chairman of the Finance Committee is not only very good but he works very hard, as the Senator from Oklahoma, to be bipartisan, which I think is important, too. I tried to do that when I chaired an authorizing committee. But still that doesn't mean that we should ignore the importance of this issue.

To get into the substance, to respond again to some of the points that have to be responded to—I am sorry they have to be responded to, but I do think they have to be responded to because the intensity of the argument that we were not accurate in raising this point of order is such that to let it just sit would be wrong. Again, I regret that I have to do this.

The point, to go back to the essence of the issue, was that the budget set at \$284 billion the level of allocation for the highway bill. Under this amendment, that spending goes up to \$295 billion-plus. That was the point of order.

As an ancillary to that discussion, we did get into the issue of just what has happened in the history of this highway bill. Yes, last year through the JOBS bill there was a finessing of the way money flows from account to account around here, so that the highway fund was given a lot more money at the expense of the general fund. I made reference to that.

I didn't mention ethanol, although the response spent a lot of time on ethanol. In fact, I specifically didn't mention ethanol because I know that tends to incite some Members around here. I just simply said last year about \$15 billion ended up being moved out of general fund activity, or being laid off on the general fund, in exchange for giving the highway fund an extra \$15 billion. And no matter how you account for it, we end up \$15 billion short. That is just the way it is. The money gets spent on the highway proposal, and so we are \$15 billion short.

The way it worked, to get specific, was that the subsidy to ethanol gasoline, which is about 5 cents a gallon

which had been borne by the highway trust fund, was shifted over to the general fund, so the general fund ended up with about a \$13 billion hit. The highway fund ended up with a \$13 billion windfall, arguably.

Then there was about \$2.5 billion which historically had gone, since 1993, from the gas tax into the general fund, because under the 1993 agreement there had been an agreement that the gas tax would be raised—I think by 5 cents—and it was agreed at that time that half of that would go to the highway fund to build roads and the other half would go to deficit reduction, and historically those moneys have stayed there for deficit reduction or in the general fund. So that money was taken out of the general fund and moved back to the highway fund. It was probably a legitimate decision, but it did cost us \$2.5 billion or thereabouts. So that is where the number came from. I think it was an accurate statement. We were basically putting about a \$13 billion hole in the general fund in order to get this bill up to the \$284 billion level.

To go from the \$284 billion level to the \$295 billion level, which again created the point of order because that exceeded the allocation, the Finance Committee reported a bill which represented that they had offsets to pay for that difference. They said Joint Tax had scored it that way.

First off, I said the offsets were illusory. I believe they are illusory. But I also made the point that even if they are not illusory, it didn't matter because it still created the problem for the budget, which is that you exceeded the \$284 billion. But I think it is hard to argue—and again I use the term it didn't pass the “straight face test”—to argue that an offset that has been used 14 times and failed 14 times is an offset that has much likelihood of success.

The chairman makes the point, and it is a legitimate point, that he is a stick-to-it guy and he is going to get this someday no matter what, and he is going to stick to it no matter what. I admire that. He is a stick-to-it guy. His work on the bankruptcy bill has been extraordinary. His work on a lot of bills around here has been extraordinary, and that is probably because he is dogged on some of this stuff. When he bites ahold of something, he stays with it, and that is impressive.

But I do think when folks are sitting back in the office, thinking about how to pay for this thing, and they came up with putting in the enterprise tax again after 14 attempts at using this item, that they knew the likelihood of that happening was very slim. So I think it was reasonable to say that number was illusory. But equally important, the representation that the Joint Tax Committee is the final arbiter of that question is something I believe has to be clarified, because that was the chairman's position.

So I think I would like to know the clarification of this. As chairman of the Budget Committee, I believe I have

the right to know whether Joint Tax or the Budget Committee is the final arbiter of that because, as I understand it, under section 201(f), which was cited by the chairman of the Finance Committee, but not entirely:

The Budget Committee of the Senate and the House shall determine all estimates with respect to scoring points of order and with respect to execution of purposes of this act. I ask a parliamentary inquiry of the Chair:

Who is the proper scorer of points of order relative to revenues and expenses?

The PRESIDING OFFICER. The Senator is entitled to an answer. Under the Congressional Budget Act of 1974, termination of points of order section 312, the Budget Committee determination for purposes of this title and title IV, the levels of measuring budget authority outlays, direct spending, new entitlement authority, and revenues for fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or the Senate, as applicable.

Mr. GREGG. I thank the Chair for that ruling. I hope that clarifies that point and responds, I believe, adequately to the points of the chairman of the Finance Committee that might not be the case.

Let me summarize. We made a point of order, a motion to waive was brought forward, the chairman of the Finance Committee, and the chairman of the Transportation and Public Works Committee were successful by an overwhelming vote and we lost.

I do not think that should lead to the chairman of the Committee on Finance coming to the Senate and suggesting the role of the Committee on the Budget in making these points is in some way inappropriate or irrelevant, that we should not take this effort to try to enforce a budget—especially when we passed the budget last week.

I admire, as I said, the Finance Committee chairman a great deal. I am sorry this misunderstanding has occurred. But I do believe I have an obligation as chairman of the Committee on the Budget to at least speak up on behalf of my staff, who has done an extraordinary job under fairly difficult circumstances.

In that context, for a more historical perspective on the highway bill, since this was cited by the chairman of the Committee on Finance, I ask unanimous consent to have printed in the RECORD the Informed Budgeteer statement which is a budget statement summarizing the history of the highway bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INFORMED BUDGETEER

As the May 31 expiration date of the latest extension of federal surface transportation programs rapidly approaches, the pressure is on the Senate to pass a reauthorization bill by the end of this month. The House passed its version of the bill (H.R. 3) last month.

The Senate bill is being considered on the floor, as the four committees with jurisdiction—Environment and Public Works (EPW), Banking, Commerce, and Finance—have each marked up their respective titles of the bill. The Banking, Commerce, and Finance titles are added on the floor to the bill reported by EPW.

There are several different metrics that participants in the legislative process are using to evaluate this bill besides “how much does each state get?”—is it more than the President's request, is there enough “money” in the highway trust fund, and does the budget resolution allow it?

Bigger than the President's Request?

The Senate-reported and House-passed bills are, in total, both consistent with the President's FY 2006 Budget request of \$284 billion for transportation programs for FY 2004–2009, reflecting the informal conference agreement reached, but not enacted, last year.

End of story, right? . . . given this apparent coalescence around a \$284 billion bill? Because the Administration drew a line in the sand most recently with a SAP threatening to veto anything above \$284 billion (as well as anything creating a new federal borrowing mechanism), the Senate leadership insisted that the bill brought to the floor not breach that level. The authorizers' action, however, has only lived up to the letter, but not the spirit, of that admonition. Senate authorizers snuck in a change to their substitute, without a separate vote, to increase the bill's funding level above \$284 billion. So the bill before the Senate currently exceeds the prescribed level by \$10–\$15 billion.

Affordable from the Highway Trust Fund?

The latest CBO estimates indicate that revenue now credited to the highway trust fund is sufficient to support a \$284 billion bill, mainly due to provisions in the American Jobs Creation Act (AJCA) of 2004 (P.L. 108–357), enacted in the closing days of the 108th Congress. But last summer the highway trust fund could not have supported a \$284 billion bill. How can the highway trust fund all of a sudden have sufficient resources?

Last summer, the Senate faced the exact same pickle it does now. The Senate's highway spending appetite (\$319 billion) was greater than the level of related federal revenues dedicated to highways and transit at that time. The Finance Committee had intended to pay for the additional spending through a combination of (1) brand new revenues from those who had been avoiding gasoline taxes (fuel fraud) and (2) shifting the incidence of revenues the government was already collecting (2.5 cents gas tax), or already not collecting (ethanol subsidy), between the general fund and the highway trust fund (general fund transfers).

To the extent that some proposed increases in highway trust fund spending were being justified on the concept of general fund transfers (which do not constitute new revenue to the federal government), that spending would have been a pure increase in the federal deficit. Because of bipartisan concern about such a deficit increase on the part of some of its members, the Finance Committee committed to offsetting some of the general fund transfers with unrelated (to highways) revenue raisers.

Such unrelated-but-real new revenues could have mitigated the deficit increase that would have otherwise resulted from the component of higher trust fund spending rationalized by magically “augmented” trust-fund balances. However, when the highway bill failed to emerge from conference last year, the fuel fraud and general fund transfer provisions were lifted out of S. 1072 and enacted separately in AJCA, without the accompanying additional offsets that had been promised by the Finance Committee.

It is true that the enacted fuel fraud provisions are now bringing a welcome \$1 billion or so per year (that was not being collected before) to the federal government and the highway trust fund. But the enacted general fund transfers have made the highway trust fund "healthier" by about \$2-3 billion annually only by definition, since merely moving around deck chairs has not changed the federal government's bottom line.

Nonetheless, because there is a new CBO baseline and a new Congress, highway spending proponents in the Senate only seem to notice that the highway trust fund will now support a higher level of spending than it did six months ago (even though gasoline consumption has not increased, and has probably decreased because of higher prices). They seem to forget that some of the spending that will be done on the strength of these general fund transfers was supposed to have been offset by real revenue increases.

Bigger than the Budget Resolution? The "reported" Senate transportation bill already exceeded the levels of contract authority allocated for 2006 (for the Banking Committee) and for the 2006-2010 period (for all three committees) by the FY 2006 budget resolution just adopted.

How can that be if the 2006 budget resolution assumes the \$284-billion level? The oversimplified answer is that the budget resolution assumed the stream of contract authority associated with the H.R. 3 as passed by the House (because the House had completed its action, while the Senate had not finished reporting as the conference report on the budget resolution was being finalized). But the spread of the \$284 billion across the years and over the different types of transportation spending (highways, transit, and safety) is different in the "reported" Senate bill, which means that the Senate bill does not fit an allocation based on the House bill. Therefore, a 60-vote point of order (under section 302(f) applied against the "reported" bill).

Now that the bill has been increased by \$10-\$15 billion, a point of order applies against the \$295-\$300 billion bill. (Last year, a 302(f) point of order was raised against S. 1072 the Senate highway bill in the 108th Congress, but the Senate waived it by a vote of 72-24.)

Authorizers potentially could avoid a 302(f) point of order by employing the mechanism established in section 301 of the 2006 budget resolution, which anticipated that transportation spending demands would exceed the levels allocated by the resolution.

Section 301 says that if the Senate EPW, Banking, or Commerce Committee (Transportation and Infrastructure Committee in the House) reports a bill (or amendment thereto is offered) that provides new budget authority in excess of the budget resolution levels, the Budget Committee Chairman, may increase the allocation to the relevant committee "to the extent such excess is offset by . . . an increase in receipts" to the highway trust fund. Such legislation increasing receipts must be reported by the Finance Committee.

The Finance Committee once again has pledged to provide additional receipts to the highway trust fund to support higher spending on transportation programs, but the title of the bill reported by the Finance Committee does not include any offsets.

It appears that the Finance Committee's floor amendment includes provisions quite

similar to those general-fund transfers that were included in last year's Senate-passed bill. Such general-fund transfers do nothing to offset the deficit effect of the increased spending in that amendment.

This year's Senate floor debate on the highway bill seems all too familiar, with proponents of higher spending on highway and transit programs potentially considering options that would partially "pay for" a larger bill by rearranging paper entries on the government's books rather than increasing resources collected by the federal government—the same as last year's debate. Now the Senate must decide whether to allow history to be repeated, a mere two weeks after it adopted a conference report on a budget resolution to enforce fiscal discipline at agreed-upon levels.

AN EMERGENCY, A SUPPLEMENTAL, OR AN EMERGENCY SUPPLEMENTAL?

While the Senate debated the Iraq supplemental two weeks ago, there was some confusion about the effect of emergency designations and the difference between regular and supplemental appropriations. Over the last four years, Congress has repeatedly approved funding outside the regular appropriations process in response to the wars in Afghanistan and Iraq and the war on terror. The funding has most often been in an emergency supplemental appropriation. Though emergency designations and supplementals are often discussed as if they are interchangeable terms, they are distinct concepts.

Supplemental appropriations. A supplemental appropriation is simply an appropriations bill other than the regular appropriations bills that the Congress must consider each fiscal year (most recently there were 13 such regular bills; for 2006 there are 12 in the Senate and 11 in the House). Neither a supplemental bill nor all items in it are necessarily designated as an emergency or even intended for purposes alleged to be emergencies. Simply providing funding through a supplemental appropriation does not trigger the "do not count" (for budgetary enforcement) treatment that an emergency designation provides. Each item in a supplemental must include an explicit emergency designation to receive "do not count" status.

Supplemental appropriations are required when, after the regular appropriations are enacted for the year, new events or information requires adjustments to the previously appropriated amounts. Supplementals are also useful for purposes that are known to be temporary because a supplemental provides a discrete and therefore optically severable amount of money that could discourage those amounts from becoming part of and enlarging regular appropriations in future years.

Emergency designations. Emergency designations are attached to individual accounts (and may even be attached to tax provisions or direct spending items in authorization bills), and can be used in any appropriations bill, either regular or supplemental. When a provision is designated as an emergency, the Budget Committee does not count the spending in that line item against the enforceable levels in the budget resolution. Contrary to popular misconception, the emergency spending still counts toward total federal spending and the deficit; it is only

not counted for Congressional enforcement purposes.

The appropriate use of an emergency designation in the Senate is most recently articulated in section 402(b) of the Conference Report on the 2006 Budget Resolution, which is the source of the authority to not count emergencies for purposes of budgetary enforcement. Section 402 (and its predecessors in the 2004 and 2005 budget resolutions) have required that the report accompanying any bill with emergency spending to explain the manner in which the spending is sudden, urgent, pressing, a compelling need requiring immediate action, unforeseen, unpredictable, unanticipated and temporary. To date, this requirement has been ignored.

However, whether the emergency point of order applies does not depend on whether this reporting requirement has been fulfilled or on any evaluation of whether the emergency item actually meets the criteria. Instead, the emergency point of order automatically applies to any non-defense spending item that has an emergency designation. Defense emergencies are exempt from the point of order. The existence of the point of order allows any Senator to use the "eye-of-the-beholder" test to confront the rest of the Senate with the issue of whether a non-defense item meets the emergency criteria and warrants an emergency designation so that it does not count for enforcement.

If the point of order is raised against a non-defense emergency designation in either a pending bill or amendment, supporters of the spending can move to waive the point of order, which requires 60 votes. If the point of order is sustained, the emergency designation is struck and the spending in the bill or amendment is then counted against the 302(a) allocation and other appropriate levels. If the committee is already at or above its allocation (this is the case for fiscal year 2005), the amendment or bill then faces a 60-vote 302(f) point of order.

Baseline treatment. While the concepts are not interchangeable, a commonality between emergency spending and supplemental appropriations is their treatment in the CEO baseline. Whether in a regular or supplemental appropriation (and regardless of the presence of an emergency designation), every discretionary spending item appropriated for the current fiscal year is assumed by CBO to continue on, adjusted for inflation, in the subsequent fiscal years for baseline purposes. Statutory rules for constructing the baseline mandate this treatment, and CBO has no discretion to pick and choose which discretionary items may be recurring versus a one-time only expenditure.

The Budget Committees are not required to use the CBO baseline as the basis for constructing the budget resolution. But in practice, the Budget Committees use their discretion to adopt an alternate baseline in only limited circumstances. Removing what the Committees view as temporary spending from the baseline is an instance where the Committees occasionally make adjustments to the CBO baseline. However, CBO's 2006 baseline (issued in March 2005) did not include appropriations for Iraq and Afghanistan because a 2005 supplemental has not been enacted, so no baseline adjustment was necessary in this year's budget resolution.

TRANSPORTATION BILL COMPARISONS TOTALS FOR 2004-2009
[\$ IN BILLIONS]

	Pres. FY06 budget	House passed (109th)	Senate re- ported (109th)	Senate passed (108th)
EPW—Highways	227	225	226	256
Banking—Transit	40	42	43	47

TRANSPORTATION BILL COMPARISONS TOTALS FOR 2004–2009—Continued
(\$ IN BILLIONS)

	Pres. FY06 budget	House passed (109th)	Senate re- ported (109th)	Senate passed (108th)
Commerce—Safety	6	6	6	7
Subtotal, Contract Auth.	273	273	275	310
Authorized Discretionary Transit BA	9	11	9	10
Highway Emerg. Relief Supplemental	2	n/a	n/a	n/a
Advertised Bill Total	284	284	284	319

In FY 2005, \$2 billion was appropriated from the highway trust fund for the Federal-aid highway emergency relief program to provide funds to repair damage from the 2004 hurricanes and to clear the backlog of emergency relief program requests. The Administration includes this funding in its revised reauthorization proposal, but the House and Senate proposals do not.

NOTE: Totals may not add due to rounding.

Mr. GREGG. Those points having been made, I acknowledge defeat on this point. I admire, as I said, the chairman of the committee for being a successful chairman who knows how to get things done around here. We may disagree on occasion, but my admiration for him certainly does not abate in any way because of those disagreements. In fact, my respect grows. But do not expect we will disappear. We were not wilting violets around here on the Committee on the Budget. We will continue to try to make points on the points of order we think are appropriate.

Mr. INHOFE. Madam President, before the chairman of the Committee on the Budget leaves, there are some areas where an honest disagreement can take place. One is on the idea that if we try to establish a policy in this country that addresses something that is an emotional need or desire of any of these Members and it has nothing to do with transportation, that should not be borne on the backs of the highway trust fund.

We talk about the ethanol provision which I opposed, but nonetheless we had that, the Senator is right, and the cost of that. If they want to pay for it, let them pay for it out of the general fund. Why should the highway trust fund be paying for policies?

And the same is true on the deficit reduction. I stood in the Senate at that time that took place saying I was for deficit reduction but not on the backs of the highway trust fund. The reason I say that is because I have considered this to be somewhat of a moral issue. People go to the pump and they pay tax for gasoline. There is an assumption, as wrong as it is, that money should go to repairing roads and highways and bridges. I do disagree in that respect.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Madam President, I ask unanimous consent that the pending amendment be set aside so the Senate may consider amendment No. 606.

The PRESIDING OFFICER. There is no amendment pending.

RECESS SUBJECT TO THE CALL OF
THE CHAIR

The PRESIDING OFFICER. The Chair declares the Senate in recess subject to the call of the Chair.

Thereupon, at 12:02 p.m., the Senate recessed until 1:02 p.m. and reassembled when called to order by the Presiding Officer (Mr. DEMINT).

The PRESIDING OFFICER. The majority leader is recognized.

CAPITOL SECURITY THREAT

Mr. FRIST. Mr. President, we had a short recess for about an hour because of a security threat that, by now, has been covered well in the media. I wish to take this opportunity to thank the Capitol Police and the various assistants throughout the Capitol because when we have that sort of alert, which comes very quickly, very unexpectedly while we are in session here, but at the same time this huge Capitol Building with literally hundreds and thousands of people working in this complex having to stop and evacuate in an orderly way is a real challenge.

So I thank everybody, including our guests, because at the same time we have all of us who are working here in this Capitol structure, there are guests visiting throughout the Capitol. Everybody left in an orderly way and in a way that was safe and calm. As far as I have heard in talking with the Sergeant at Arms, there were no injuries. When you have that sort of rapid departure, that is always a risk.

Our Capitol Police, Sergeant at Arms, and the Secretary of the Senate all responded in a way that we can all be proud of. Most importantly, the offending aircraft is now on the ground, and the pilot and whoever else was in the plane are being questioned.

Now I am happy to turn to the Democratic leader.

Mr. REID. Mr. President, I am grateful that the distinguished Republican leader would come to the floor of the Senate and acknowledge the people who look after us every day. The training of our Capitol Police force is exceptionally good. I was with them, as was the distinguished Republican leader, and I am amazed at their professionalism as they took us away.

I am an alumni of different universities, a proud lawyer, and a number of other things I have had the good fortune of working with over a number of years, but I am an alumni of the Capitol Police. I am very proud of that. I recognize that the work I did those many years ago as a Capitol policeman

pales in comparison to the problems that face this beautiful building of the American people.

I am so confident that we have the best police force in the world here on Capitol Hill. They have to deal with bomb threats and all kinds of chemical problems. The Republican leader, who is a doctor, worked through the anthrax problem; I wasn't involved with that. But they are experts at that. They are aware of anything that is going on in the world regarding terrorism because of these evil people from around the world. This is, if not the No. 1 target, one of the top targets.

I appreciate and commend and applaud the majority leader for coming here immediately and recognizing these people who look after us every day. Every day, we see them standing around doors, and they don't appear to be working real hard, but it is on days such as this that they earn their pay over and over again. I am glad and happy that I had the experience to be a Capitol policeman, and I look forward to continually being protected, along with the American public, in this great building by these wonderful men and women.

The PRESIDING OFFICER. The majority leader is recognized.

TRANSPORTATION EQUITY ACT: A
LEGACY FOR USERS—Continued

Mr. FRIST. Mr. President, due to the recess, I ask unanimous consent that notwithstanding rule XXII, all first-degree amendments to the highway bill must be filed at the desk no later than 2 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. Mr. President, regular order.

AMENDMENT NO. 606 TO AMENDMENT NO. 605

The PRESIDING OFFICER. The clerk will report the amendment that was sent up just before the recess.